

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

SHAWN FLYNN,

**Plaintiff,**

2:19-cv-00213-MMD-CLB

vs.

JAMES DZURENDA, et. al.

## ORDER

## Defendants.

Plaintiff Shawn Flynn (“Flynn”) filed a motion for leave to file an amended complaint. (ECF No. 39). Flynn, who was previously representing himself pro se, seeks to amend his complaint, through his court-appointed counsel, to address prior issues with the complaint and to add certain claims. Flynn’s case is one of several civil actions that have been consolidated for purposes of discovery and litigation related specifically to whether current and/or former employees of the NDOC violated the civil rights of inmates by failing to treat their Hepatitis C (“Hep-C”). See Case No. 3:19-cv-00577-MMD-CLB.

Defendants oppose this motion asserting that it violates a stay in place pursuant to prior orders of the court related to the consolidated case. (ECF No. 40). In the alternative, Defendants argue that even if there is no stay, the request to amend the complaint is premature because the court has yet to rule on a motion to certify a class related to the claims surrounding Hep-C treatment in Nevada state prisons. (*Id.*)

26 In reply, Flynn argues there is no stay in place at this time and therefore the  
27 amendment to the complaint is not premature. (ECF No. 41).

1 Having reviewed the parties' filings and the court's previous orders in both this  
2 case and the consolidated Hep-C matter, the court denies Flynn's motion without  
3 prejudice to re-file after the court rules on the motion for class certification.

4 **I. DISCUSSION**

5 On February 5, 2019, Flynn filed an application to proceed in forma pauperis  
6 seeking to file his complaint, which alleged various claims under the Eighth Amendment,  
7 American with Disabilities Act, Rehabilitation Act, and state torts. (ECF No. 1, 1-1).  
8 These claims all arose from the failure of employees at the NDOC to provide treatment  
9 to Flynn for his Hep-C. (*Id.*) The court screened Flynn's complaint on March 8, 2019,  
10 which permitted some claims to proceed and dismissed his claim for negligent infliction  
11 of emotional distress. (ECF No. 5). Ultimately, the court appointed pro bono counsel to  
12 represent Flynn in this matter. (ECF No. 31).

13 By the summer of 2019, numerous civil cases had been filed by inmates housed  
14 at the NDOC, who also alleged that their rights were violated due to the failure of NDOC  
15 and its employees to provide treatment for Hep-C. Recognizing the common issues of  
16 law and fact presented by these various cases, the court stayed discovery in these  
17 matters and consolidated the lawsuits for purposes discovery and litigation related to the  
18 common issues. (See *In Re: HCV Prison Litigation*, Case No. 3:19-cv-00577-MMD-CLB,  
19 ECF No. 1.) The express purpose of the consolidation of these matters was to  
20 consolidate the efforts of all parties related to litigation involving Hep-C cases in order to  
21 conserve both the parties and the court's time and resources in handling these matters.

22 In Pre-Trial Order #1 in the consolidated matter, the court set an initial case  
23 management conference and directed the parties to meet and confer regarding a  
24 process to be used to handle discovery and other outstanding issues related to the

1 cases. (*Id.*, at ECF No. 1). At the initial case management conference, the court was  
2 advised that the plaintiffs intended to file a motion to certify a class action and to file an  
3 amended class action complaint. (*Id.*, at ECF No. 2). The court inquired of all parties  
4 related to this procedure and no objection was raised. The court then set a briefing  
5 schedule for the filing of the motion to certify as well as filing the amended complaint.  
6 (*Id.*) The court also stayed all discovery pending the next pretrial conference.  
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8 At the second pretrial conference, the court partially lifted the discovery stay for  
9 the consolidated actions to permit limited document discovery to proceed. (*Id.*, at ECF  
10 No. 8). However, the discovery stay remained in place in other respects. In addition, the  
11 court also requested, and ultimately received, the withdrawal of various outstanding  
12 motions in several of the consolidated actions. (*Id.*) Consistent with the purpose of  
13 consolidation, the withdrawal of these motions was to ensure that efforts were not being  
14 duplicated by the parties and to allow the parties and the court to focus on the issues  
15 raised in the motion to certify prior to the court addressing such things as prior filed  
16 motions to amend, motions to dismiss, motions for summary judgment and the like.  
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18 Flynn now moves to file a second amended complaint in order to cure certain  
19 defects that may be present in the current complaint in this case. (ECF No. 39).  
20 However, the court agrees with the defendants that this motion is premature. Currently  
21 pending before the court is a motion to certify a possible class action expressly related to  
22 the various consolidated cases, which includes a joint amended complaint for class  
23 action relief. (See *HCV Prison Litigation*, ECF No. 11). If that motion is granted, Flynn  
24 will have the option to join in that lawsuit negating the need for an amended complaint in  
25 the current lawsuit. On the other hand, if the motion is denied or if Flynn chooses not to  
26 participate in the class, the filing of a motion to amend would then be appropriate.  
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1 However, until that time, the current motion is premature. Therefore, the court denies  
2 Flynn's motion for leave to file an amended complaint, (ECF No. 39), without prejudice to  
3 re-file after a decision is made with respect to the motion to certify in the consolidated  
4 action.

5 **II. CONCLUSION**

6 **IT IS THEREFORE ORDERED** that Flynn's motion seeking to leave to file an  
7 amended complaint (ECF No. 39) is **DENIED without prejudice**.

8 **DATED:** January 31, 2020.

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12 **UNITED STATES MAGISTRATE JUDGE**  
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